

S155094

# Supreme Court Copy

## IN THE SUPREME COURT OF CALIFORNIA

### EPISCOPAL CHURCH CASES

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF  
OF CLIFTON KIRKPATRICK ET AL. IN SUPPORT OF  
PLAINTIFF IN INTERVENTION AND RESPONDENT  
EPISCOPAL CHURCH

Court of Appeal, Fourth Appellate District, Division Three  
(Appeal Nos. G036096, G036408, G036868)

Orange County Superior Court (J.C.C.P. 4392; 04CC-00647)  
The Honorable David C. Velasquez, Coordination Trial Judge

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SUPREME COURT  
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TO THE CHIEF JUSTICE OF THE CALIFORNIA SUPREME COURT:

Pursuant to California Rule of Court 8.520(f), the Amici Curiae (“Amici”) respectfully submit this Application for Leave to File Amicus Brief in support of Respondent Episcopal Church. This application is filed concurrently with the proposed Amicus Curiae brief and is timely made within 30 days after the filing of the reply brief on the merits.

**THE AMICI CURIAE**

The Amici include (1) Clifton Kirkpatrick, the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.); (2) Joey Mills, Stated Clerk of the Synod of the Pacific; (3) Katherine J. Runyeon, Stated Clerk of the Presbytery of San Francisco; (4) Rev. Joseph Lee, the Executive Presbyter, and Elder John Lococo, the Stated Clerk and ecclesiastical officer, of the Presbytery of San José; (5) the General Council on Finance and Administration of the United Methodist Church; (6) Wesley Granberg-Michaelson, the General Secretary of the Reformed Church in America; (7) the General Conference of the Seventh-day Adventists; (8) the Christian and Missionary Alliance; (9) the International Church of the Foursquare Gospel; and (10) the Worldwide Church of God.

1. Clifton Kirkpatrick, the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.)

Clifton Kirkpatrick, as Stated Clerk of the General Assembly, is the senior continuing officer of the Presbyterian Church (U.S.A.). The Presbyterian Church (U.S.A.) is a national Christian denomination with nearly 2.3 million members in more than 11,200 congregations, organized into 173 presbyteries under the jurisdiction of 16 synods. It is organized through an ascending series of organizations known as church sessions, presbyteries, synods, and, ultimately, a General Assembly. Through its antecedent religious bodies, it has existed as an organized religious

denomination within the current boundaries of the United States since 1706. The General Assembly is the highest legislative and interpretive body of the denomination, and the final point of decision in all disputes. As such, its statements are considered worthy of respect and prayerful consideration of all the denomination's members.

2. Joey Mills, Stated Clerk of the Synod of the Pacific, Presbyterian Church (U.S.A.)

Joey Mills is the Stated Clerk of the Synod of the Pacific, a regional body of the Presbyterian Church (U.S.A.). The Presbyterian Church (U.S.A.) is a national Christian denomination with nearly 2.3 million members in more than 11,200 congregations, organized into 173 presbyteries under the jurisdiction of 16 synods. The Synod of the Pacific's jurisdiction covers a large part of California, and its 11 presbyteries also include those in Oregon, Idaho and Nevada.

3. Katherine J. Runyeon, Stated Clerk of the Presbytery of San Francisco, Presbyterian Church (U.S.A.)

Katherine J. Runyeon is the Stated Clerk of the Presbytery of San Francisco, a regional body of the Presbyterian Church (U.S.A.). The Presbytery of San Francisco has 78 congregations and five new church developments in California, and has existed in California since 1849.

4. Rev. Joseph Lee and Elder John Lococo of the Presbytery of San José, Presbyterian Church (U.S.A.)

The Rev. Joseph Lee is the Executive Presbyter and Elder John Lococo is the Stated Clerk and ecclesiastical officer of the Presbytery of San José, a regional body of the Presbyterian Church (U.S.A.). The Presbytery of San José has 45 congregations, new church developments and fellowships in California and has existed within the current boundaries of the state since 1849.

5. The General Council on Finance and Administration of the United Methodist Church

The General Council on Finance and Administration (GCFA) of the United Methodist Church, Inc., an Illinois corporation, is the financial and administrative arm of the United Methodist Church (UMC). The UMC is a worldwide religious denomination with approximately thirteen million members. Through its various agencies, The UMC performs mission work in over 165 countries. The UMC is one of the largest religious denominations in the United States. It has approximately 35,000 local churches and nearly eight million members in the United States. There are approximately 157,745 United Methodist members and 669 churches in the state of California.

6. Wesley Granberg-Michaelson, the General Secretary of the General Synod of the Reformed Church in America

The Reformed Church in America traces its history in North America to 1628, and as a result is the oldest protestant denomination in North America with a continuous history. The General Synod of the Reformed Church in America is the highest assembly and judicatory in the Reformed Church in America. Wesley Granberg-Michaelson, as General Secretary of the General Synod, is the chief administrative and ecumenical officer of the Reformed Church in America.

Today, the Reformed Church in America includes approximately 300,000 people of many cultures across the North American continent. There are approximately 950 churches in the United States and Canada. These churches are assembled into 45 regional units (each called a classis), and the 45 classes are assembled into 8 regional units (each called a regional synod). The Regional Synod of the Far West includes the State of California and several other states, and two classes (the Classis of California and the Classis of Central California) are located within the State

of California. The Classis of California contains approximately 34 local churches and the Classis of Central California contains approximately 17 local churches. Additionally, approximately 16 congregations in the State of California presently are in the process of being formally organized as local churches in the Reformed Church in America.

7. The General Conference of the Seventh-day Adventists

The General Conference of Seventh-day Adventists is the highest administrative level of the Seventh-day Adventist church and represents nearly 59,000 congregations with more than 15 million members worldwide. In the United States, the North American Division of the General Conference oversees the work of more than 5,000 congregations with more than one million members. In addition to churches and related administrative offices, the denomination runs approximately 850 elementary schools, 114 secondary schools, and 13 institutions of higher learning. These institutions are in all 50 states and thousands of local towns, municipalities and school districts.

8. The Christian and Missionary Alliance

The Christian and Missionary Alliance (C&MA) is an evangelical denomination established in 1897 with a major emphasis on world evangelization. It maintains a “big tent” stance in reference to many doctrinal matters, encouraging believers of diverse backgrounds and theological traditions to unite in an alliance to know and exalt Jesus Christ and to complete His Great Commission. The C&MA has 2,010 member churches in the 50 states of the United States, Puerto Rico and the Bahamas with approximately 417,000 individual members and adherents and 4,250 official workers. The C&MA also has 800 missionary personnel in 58 countries around the world.

9. The International Church of the Foursquare Gospel

The International Church of the Foursquare Gospel (“The Foursquare Church”), a California nonprofit corporation, was established in 1927 to propagate and disseminate the principles of Christianity embraced in the Foursquare Gospel. As a hierarchical church, The Foursquare Church operates local Foursquare Gospel churches in every state of the United States, including California, and around the world. As of the year 2007, there were 1,874 Foursquare churches in the 50 states of the U.S. having 257,357 members and 6,717 credentialed ministers.

10. The Worldwide Church of God

The Worldwide Church of God, a California, non-profit religious corporation, is a hierarchical Christian church denomination with hundreds of local churches in the United States.

**INTEREST OF THE AMICI**

This appeal raises issues of utmost concern not only for the Episcopal Church, but for Amici and every hierarchical church in the State of California. Resolution of these issues will have a direct and profound impact on the ownership of church property statewide, the trusts that have been in place for decades under Supreme Court precedent, the manner in which church governing documents and procedures are drafted and handed down by hierarchical denominations with local churches in California, and the manner in which lower courts and religious denominations approach church property disputes. For this reason, Amici have a substantial interest in the present matter.

**RELEVANCE OF THE AMICUS CURIAE BRIEF**

The Amici are familiar with the issues before this Court and the scope of their presentation. The Amici believe that further briefing is

necessary to address issues not fully addressed by the parties' briefs: Since 1889, the "principle of government" approach has been the rule of law in California and should be used by all lower courts faced with hierarchical church property disputes beyond the specific dispute in this case. The adoption of Petitioners' "neutral principles" approach would create grave uncertainty, reduce the autonomy of churches to govern themselves by permitting greater state intrusion into church matters, and increase the incidence of church property disputes brought to civil courts. Further, if the Court were to adopt the neutral principles approach, lower courts adjudicating church property disputes should be instructed to look beyond corporate deeds and charters to comply with U.S. Supreme Court precedent that compels courts to examine church governing documents to determine whether those documents create a trust separate and apart from any corporate charters and deeds.

### **CONCLUSION**

For the foregoing reasons, the Amici Curiae respectfully request that the Court grant their Application for Leave to File Amicus Curiae Brief and accept the accompanying brief for filing in this case.

Dated: May 22, 2008

Respectfully submitted,

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## TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. CALIFORNIA’S PRINCIPLE OF GOVERNMENT APPROACH TO RESOLVING CHURCH PROPERTY DISPUTES PROVIDED PREDICTABILITY AND STABILITY FOR DENOMINATIONAL CHURCHES FOR OVER ONE HUNDRED YEARS .....	4
A. The California Supreme Court has Explicitly Adopted and Applied Principle of Government. ....	5
B. Principle of Government is Consistent with U.S. Supreme Court Decisions and is Used in Many Other States. ....	7
C. Intermediate Appellate Court Decisions That Deviated From California Supreme Court Precedent Should be Overruled.....	9
III. EVEN UNDER NEUTRAL PRINCIPLES, AN EXPRESS CONSTITUTIONAL TRUST ENSURES THAT DENOMINATIONS RETAIN CHURCH PROPERTIES .....	13
A. The U.S. Supreme Court Requires that Courts Examine Church’s Governing Documents to Determine Whether They Recite an Express Trust.....	14
B. Ignoring Trust Language in Denominational Church Governing Documents Would Ensure Nothing to its Loyal Members. ....	18
IV. CONCLUSION .....	19

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Baker v. Ducker</i> (1889) 79 Cal. 365 [21 P. 764] .....	1, 5, 6, 12
<i>Bethany Indep. Church v. Stewart</i> (La.Ct.App. 1994) 645 So.2d 715 .....	18
<i>Bishop &amp; Diocese of Colo. v. Mote</i> (Colo. 1986) 716 P.2d 85.....	17
<i>California-Nevada Annual Conference of the United Methodist Church v. St. Luke's United Methodist Church</i> (2004) 121 Cal.App.4th 754 [17 Cal.Rptr.3d. 442].....	10, 11, 16
<i>Calvary Presbyterian Church v. Presbytery of Lake Huron</i> (Mich.Ct.App. 1986) 384 N.W.2d 92.....	8
<i>Church of God in Christ v. New Jerusalem Church of God in Christ</i> (Kan.Ct.App. 1999) 992 P.2d 812.....	8
<i>Concord Christian Ctr. v. Open Bible Standard Churches</i> (2005) 132 Cal.App.4th 1396 [34 Cal.Rptr.3d. 412].....	10, 11, 12
<i>Cumberland Presbytery v. Branstetter</i> (Ky. 1992) 824 S.W.2d 417.....	18
<i>Daniel v. Wray</i> (N.C. Ct. App. 2003) 580 S.E.2d 711.....	18
<i>E. Lake Methodist Episcopal Church, Inc. v. Trustees of the Peninsula-Del. Annual Conference of the United Methodist Church, Inc.</i> (Del. 1999) 731 A.2d 798.....	18
<i>Episcopal Church Cases</i> (2007) 152 Cal.App.4th 808 [61 Cal.Rptr.3d 845].....	passim
<i>Fairmount Presbyterian Church, Inc. v. The Presbytery of Holston</i> (Tenn.Ct.App. 1975) 531 S.W.2d 301 .....	18

# TABLE OF AUTHORITIES

## (continued)

	Page(s)
<i>Green v. Westgate Apostolic Church</i> (Tex.App. 1991) 808 S.W.2d 547 .....	8
<i>Guardian Angel Polish Nat'l Catholic Church of L.A., Inc. v. Grotnick</i> (2004) 118 Cal.App.4th 919 [13 Cal.Rptr.3d 552].....	10, 12, 16
<i>Horsman v. Allen</i> (1900) 129 Cal. 131 [61 P. 796] .....	6, 9
<i>In re Church of St. James the Less</i> (Pa. 2005) 888 A.2d 795.....	17, 18
<i>Jones v. Wolf</i> (1979) 443 U.S. 595 .....	passim
<i>Kedroff v. St. Nicholas Cathedral</i> (1952) 344 U.S. 94 .....	5
<i>Korean United Presbyterian Church v. Presbytery of the Pacific</i> (1991) 230 Cal.App.3d 480 [281 Cal.Rptr. 394].....	10, 12, 16
<i>Maryland &amp; Va. Churches v. Sharpsburg Church</i> (1970) 396 U.S. 367) .....	7
<i>Metropolitan Philip v. Steiger</i> (2000) 82 Cal.App.4th 923 [98 Cal.Rptr.2d 605].....	12
<i>Mills v. Baldwin</i> (Fla. 1978) 362 So.2d 2 .....	8
<i>Org. for Preserving the Constitution of Zion Lutheran Church v. Mason</i> (Wash.Ct.App. 1987) 743 P.2d 848 .....	9
<i>Original Glorious Church of God in Christ, Inc. v. Myers</i> (W.Va. 1988) 367 S.E.2d 30 .....	9
<i>Parent v. Roman Catholic Bishop of Portland</i> (Me. 1981) 436 A.2d 888 .....	18

# TABLE OF AUTHORITIES

## (continued)

	Page(s)
<i>Permanent Comm. of Missions of the Pacific Synod of the Cumberland Presbyterian Church in the U.S. v. Pacific Synod of the Presbyterian Church, U.S.A.</i> (1909) 157 Cal. 105 [106 P. 395] .....	6, 9
<i>Presbyterian Church v. Hull Church</i> (1969) 393 U.S. 440 .....	7, 10, 11, 14
<i>Presbytery of Cimarron v. Westminster Presbyterian Church of Enid</i> (Okla. 1973) 515 P.2d 211 .....	8
<i>Presbytery of Riverside v. Cmty. Church of Palm Springs</i> (1979) 89 Cal.App.3d 910 [152 Cal.Rptr. 854] .....	passim
<i>Protestant Episcopal Church v. Barker</i> (1981) 115 Cal.App.3d 590 [171 Cal.Rptr. 541] .....	10, 11
<i>Providence Baptist Church v. Superior Court</i> (1952) 40 Cal.2d 55 [251 P.2d 10] .....	6
<i>Rosicrucian Fellowship v. Rosicrucian Fellowship Non-Sectarian Church</i> (1952) 39 Cal.2d 121 [245 P.2d 481] .....	6
<i>Seldon v. Singletary</i> (S.C. 1985) 326 S.E.2d 147 .....	8
<i>Serbian E. Orthodox Diocese v. Milivojeovich</i> (1976) 426 U.S. 696 .....	4, 7
<i>Shirley v. Christian Episcopal Methodist Church</i> (Miss. 1999) 748 So.2d 672 .....	18
<i>Tea v. Protestant Episcopal Church</i> (Nev. 1980) 610 P.2d 182 .....	8
<i>Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville</i> (N.Y. App. Div. 1999) 684 N.Y.S.2d 76 .....	18

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page(s)</b>
<i>Watson v. Jones</i> (1871) 80 U.S. 679 .....	1, 4, 5, 7
<i>Wheelock v. First Presbyterian Church</i> (1897) 119 Cal. 477 [51 P. 841] .....	6, 9, 12
 <b>Statutes</b>	
Cal. Corp. Code § 9142(c)(2) .....	16

## I. INTRODUCTION

“Principle of government” has been the rule of law in California since 1889. (*Episcopal Church Cases* (2007) 152 Cal.App.4th 808, 874–875 [61 Cal.Rptr.3d 845, 894–895]; see also *Baker v. Ducker* (1889) 79 Cal. 365 [21 P. 764].) In the present action, the Fourth District Court of Appeal exhaustively reviewed more than one hundred years of caselaw and found that “no less than six California Supreme Court opinions” followed *Watson v. Jones* (1871) 80 U.S. 679, and “consistently used a ‘principle of government’ or ‘highest church judicatory’ approach to resolve disputes over church property.” (*Episcopal Church Cases, supra*, at pp. 847–848.) Firmly rooted in the “rule of stare decisis,” the Fourth District’s decision here sought to repair the uncertainty caused by the line of cases following *Presbytery of Riverside v. Cmty. Church of Palm Springs* (1979) 89 Cal.App.3d 910 [152 Cal.Rptr. 854] (hereafter *Palm Springs*), which “had reversed about a hundred years of state and federal Supreme Court precedent, and disturbed what had been a stable legal universe in California involving the methodology by which California state courts would decide church property disputes.” (*Episcopal Church Cases, supra*, at p. 852.)

Petitioners urge this Court to abandon California’s long-standing principle of government approach for resolving church property disputes. To this end, Petitioners essentially argue that the *Palm Springs* line of lower court decisions overruled this Court’s binding precedent by adopting and applying “neutral principles of law.” (Petitioners’ Opening Brief on the Merits (hereafter “Pet. Br.”) at pp. 18–20.) Amici ask this

Court to reject Petitioners' arguments and reaffirm California's adherence to principle of government.

Neither the U.S. Supreme Court nor the California Supreme Court has abrogated or even shown disfavor to the principle of government approach, as Petitioners suggest. (Pet. Br. at pp. 15–16.) Indeed, the U.S. Supreme Court in *Jones v. Wolf* (1979) 443 U.S. 595, 602, reaffirmed that “the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes.” (*Ibid.*) Rather, a “State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters[.]” (*Ibid.*) Given the U.S. Supreme Court's express approval of principle of government as a viable approach for resolving church property disputes, and the superior ability of that method to foster certainty and reduce the incidence of legal disputes, there was and is no reason to abandon this Court's long-standing jurisprudence applying principle of government.

Further, even if this Court were to reverse its precedent and adopt neutral principles, it should reject Petitioners' faulty application of the doctrine. Petitioners urge this Court to effectively ignore the Episcopal Church's Constitution and Canons, which include an express trust, and award the property at issue to the Petitioners based on the face of deeds and corporate charters alone. (Pet. Br. at pp. 36–37 [“If a local church is incorporated and holds record title to its property, the deeds disclose no reversionary or trust interest in favor of the denomination, and the corporation has not made any express declaration of trust, under ‘neutral principles’ the world is entitled to presume that the local church owns the property”]; see also Pet. Br. at pp. 39–42.) This proposed application of neutral principles would squarely contradict the U.S. Supreme Court's



holding in *Jones v. Wolf*, which explicitly instructed courts to look beyond the deeds and charters and examine hierarchical churches' governing documents to determine whether they recite an express trust. (*Jones, supra*, 443 U.S. at pp. 600–602.)

Indeed, in *Jones*, the U.S. Supreme Court held that United States hierarchical churches, such as Respondent and Amici here, could *ensure that church property would be retained by its loyal members* in the event of a dispute by amending their constitutions rather than amending individual deeds and corporate charters:

At any time before the dispute erupts, the parties can *ensure*, if they so desire, *that the faction loyal to the hierarchical church will retain the church property*. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. *Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal.*

(*Id.* at p. 606, italics added.) Despite the U.S. Supreme Court's holding that civil courts will be bound to give effect to such action (*ibid.*), Petitioners ask the Court to impose a neutral principles paradigm in which the Court ignores church canons and constitutions. Such an approach would eliminate the protections promised by *Jones v. Wolf* and “ensure” nothing to the loyal faction of a church. To the contrary, it would empower schismatic factions — who previously pledged their loyalty to their denominational churches and acceded to those churches' constitutions — to render impotent the long-standing trusts embodied in those constitutions. Such a misapplication of *Jones v. Wolf* would have far-reaching impact beyond the parties to this case and would affect adversely all hierarchical churches that have followed *Jones v. Wolf* for the last 25-plus years. Thus, this appeal raises issues of utmost concern not only for Respondent

Episcopal Church, but for Amici and every hierarchical church in the State of California.

Accordingly, this Court should affirm its precedent as followed by the Fourth District here that principle of government shall be used in the State of California to resolve church property disputes. If the Court considers adopting neutral principles, Amici respectfully ask this Court to clarify the standards that lower courts must apply to be consistent with *Jones v. Wolf*. Under either approach, this Court should affirm the Fourth District Court of Appeal's judgment in favor of Respondents.

## II. CALIFORNIA'S PRINCIPLE OF GOVERNMENT APPROACH TO RESOLVING CHURCH PROPERTY DISPUTES PROVIDED PREDICTABILITY AND STABILITY FOR DENOMINATIONAL CHURCHES FOR OVER ONE HUNDRED YEARS

The First and Fourteenth Amendments require that civil courts “defer to the resolution of issues of religious doctrine or polity by the highest court of the hierarchical church organization.” (*Jones, supra*, 443 U.S. at p. 602) (citing *Serbian E. Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 724–725). With regard to church property disputes, the U.S. Supreme Court recognizes at least two approaches that may be constitutionally followed by a state court: principle of government (also called “hierarchical deference”) and neutral principles. (See *Jones v. Wolf, supra*, 443 U.S. 595; *Watson v. Jones, supra*, 80 U.S. 679.)

Under a principle of government or hierarchical deference approach, courts defer to the rules and decisions of the national denominational church, including determinations regarding disposition of property, because the local congregation has agreed to be bound by the rules and governance of the national church:

the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments.

(*Watson, supra*, at pp. 726–727; see also, e.g., *Kedroff v. St. Nicholas Cathedral* (1952) 344 U.S. 94.)

As discussed below, the principle of government approach has afforded predictability and stability to religious organizations in California for more than one hundred years, because it upholds the mutual obligations and responsibilities accepted by the individual congregations and national denominational churches when they joined together. (*Episcopal Church Cases, supra*, 152 Cal.App.4th at p. 852 [until the appellate line of decisions that began in 1979 with *Palm Springs, supra*, 89 Cal.App.3d 910, California religious organizations and practitioners had enjoyed a “stable legal universe”].) Conversely, at least as applied in California, neutral principles under *Palm Springs* has resulted in disparate and unpredictable rulings caused by a misapplication of the neutral principles doctrine and attempts by courts to resolve property disputes without regard to the underlying religious controversies which spawned them.

**A. The California Supreme Court has Explicitly Adopted and Applied Principle of Government.**

The California Supreme Court expressly adopted the principle of government approach to church property disputes in 1889 and has followed this approach through today without exception. (See *Baker v. Ducker, supra*, 79 Cal. 365.) In fact, as noted by the Fourth District in this case, there are no less than six decisions by this Court that apply principle of government and which have never been overruled or modified:

- (1) *Baker v. Ducker, supra*, at p. 374 [schismatic faction “had no right and no power to divert [property] to the use of another and different church organization”];
- (2) *Wheelock v. First Presbyterian Church* (1897) 119 Cal. 477, 482 [51 P. 841] [incorporated church was under the absolute control and dominion of the Presbytery, and decisions and decrees “are not only binding upon the church as an ecclesiastical body, but they are binding and conclusive upon courts wherever and whenever material to pending litigation”];
- (3) *Horsman v. Allen* (1900) 129 Cal. 131, 138 [61 P. 796] [awarding property to loyalists because the “principle of government” in the church stated that decisions of the national governing body were authoritative, and the governing body had sided with the loyalists];
- (4) *Permanent Comm. of Missions of the Pacific Synod of the Cumberland Presbyterian Church in the U.S. v. Pacific Synod of the Presbyterian Church, U.S.A.* (1909) 157 Cal. 105, 128 [106 P. 395] (hereafter *Committee of Missions*) [the prevailing rule in solving church property disputes is to look to the highest church authority and its decision must be accepted as final, and as binding on the courts];
- (5) *Providence Baptist Church v. Superior Court* (1952) 40 Cal.2d 55, 63 [251 P.2d 10] [using the principle of government approach to solve a property dispute involving a congregational church]; and
- (6) *Rosicrucian Fellowship v. Rosicrucian Fellowship Non-Sectarian Church* (1952) 39 Cal.2d 121, 132 [245 P.2d 481] [applying the same analysis to resolve a property dispute involving “an anomalous class” of church that was neither hierarchical nor congregational].

Stare decisis requires that courts follow this precedent. (*Episcopal Church Cases, supra*, 152 Cal.App.4th at p. 875 [“The rule of stare decisis reminds us that the common law is usually not the product of any one particular decision only, but of many generations of jurists focusing on a particular problem”].)

**B. Principle of Government is Consistent with U.S. Supreme Court Decisions and is Used in Many Other States.**

Petitioners suggest that *Presbyterian Church v. Hull Church* (1969) 393 U.S. 440 (hereafter *Hull Church*) and *Jones v. Wolf*, *supra*, 443 U.S. 595, somehow expressed a preference for neutral principles. (Pet. Br. at pp. 16–17 [“In short, the U.S. Supreme Court commended the ‘neutral principles’ method”].) However, neither *Hull Church* nor *Jones* suggests a preference for any one method. Indeed, in *Jones*, the Court expressly observed that *Hull Church* “noted in passing that ‘there are neutral principles of law’” but did not specify what methods state courts should follow when resolving church property disputes. (*Jones*, *supra*, 443 U.S. at p. 599.) Indeed, nothing in *Jones* — or any other U.S. Supreme Court decision — abrogated or cast disfavor on the principle of government approach first established in *Watson v. Jones*, *supra*, 80 U.S. at pp. 733–734. (See also *Serbian E. Orthodox Diocese*, *supra*, 426 U.S. at pp. 724–725.) Rather, *Jones v. Wolf* held that states may follow any one of several approaches, including principle of government (i.e., hierarchical deference) or neutral principles:

Subject to these limitations [regarding entanglement in religious doctrine or polity], however, *the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes*. Indeed, “a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether ritual and liturgy of worship or the tenets of faith.”

(*Id.* at p. 602, first italics added, second italics added by *Maryland & Va. Churches v. Sharpsburg Church* (1970) 396 U.S. 367, 368.) Since *Jones v. Wolf*, principle of government or hierarchical deference remains the law in several states. Indeed, hierarchical deference is hardly unique or, as

Petitioners argue, on “life support.” (Pet. Br. at p. 30.) Rather, it is alive and well in at least the following states:

- **Florida:** *Mills v. Baldwin* (Fla. 1978) 362 So.2d 2, 6 (judgment reinstated by (Fla. 1979) 377 So.2d 971) [“It matters not whether those who withdraw from the mother church [Presbyterian Church in the United States] constitute a majority or a minority faction, the church property remains with the mother church.”]
- **Kansas:** *Church of God in Christ v. New Jerusalem Church of God in Christ* (Kan.Ct.App. 1999) 992 P.2d 812 [finding an implied trust in favor of the general church because of the hierarchical relationship between local and general church]
- **Michigan:** *Calvary Presbyterian Church v. Presbytery of Lake Huron* (Mich.Ct.App. 1986) 384 N.W.2d 92 [affirming use of hierarchical test and declining to adopt neutral principles]
- **Nevada:** *Tea v. Protestant Episcopal Church* (Nev. 1980) 610 P.2d 182, 184 [“[T]he courts of this state should defer to the decision of responsible ecclesiastical authorities, under the internal discipline of the organization to which the local congregation has voluntarily subjected itself.”]
- **Oklahoma:** *Presbytery of Cimarron v. Westminster Presbyterian Church of Enid* (Okla. 1973) 515 P.2d 211, 217<sup>1</sup> [“[W]hen a local church voluntarily becomes an integral part of a national hierarchical church, it is thereafter bound by the latter’s constitution and its judicatories’ decisions, the holding of its property is likewise controlled by such provisions of said constitution and the authorized mandates of said judicatories ...”]
- **South Carolina:** *Seldon v. Singletary* (S.C. 1985) 326 S.E.2d 147, 151 [“The outcome of this case is dependent upon the simple determination of whether this is or is not a hierarchical church.”]
- **Texas:** *Green v. Westgate Apostolic Church* (Tex.App. 1991) 808 S.W.2d 547, 551 [“[Texas a]ppellate courts have

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<sup>1</sup> Although *Cimarron* was decided before *Jones*, it remains controlling precedent in Oklahoma.

consistently followed the deference rule in deciding hierarchical church property disputes since the Texas Supreme Court adopted the rule in [1909].”]

- **Washington:** *Org. for Preserving the Constitution of Zion Lutheran Church v. Mason* (Wash.Ct.App. 1987) 743 P.2d 848, 851 [“When the Washington Supreme Court had the opportunity to rule upon a church property dispute, the court expressly rejected the neutral principles method and, instead, reaffirmed the polity approach[.]”]
- **West Virginia:** *Original Glorious Church of God in Christ, Inc. v. Myers* (W.Va. 1988) 367 S.E.2d 30, 33 [“If the church has a hierarchical structure and its leaders have addressed a doctrinal or administrative dispute, then civil courts do not intervene, absent fraud or collusion.”]

In short, Petitioners’ suggestion that neutral principles is somehow “favored” and principle of government is somehow “disfavored” finds no support from the U.S. Supreme Court and is inconsistent with the body of law in many jurisdictions.

**C. Intermediate Appellate Court Decisions That Deviated From California Supreme Court Precedent Should be Overruled.**

In 1979, four months before *Jones v. Wolf* issued, despite this Court’s clear and consistent application of principle of government, the Fourth District Court of Appeal in *Palm Springs, supra*, 89 Cal.App.3d 910, held that California should instead adopt neutral principles of law for resolving church property disputes. Indeed, a review of *Palm Springs* shows that the opinion discards this Court’s jurisprudence (*Committee of Missions, supra*, 157 Cal. 105, *Horsman, supra*, 129 Cal. 131, and *Wheelock, supra*, 119 Cal. 477) as containing “nothing of significance indicating a contrary rule.” (*Palm Springs, supra*, 89 Cal.App.3d at p. 922.) As the Fourth District correctly noted in the present case, *Palm*

*Springs*' application of neutral principles was not based upon a proper application of the law. (*Episcopal Church Cases, supra*, 152 Cal.App.4th at p. 849 ["Whatever other merits the [neutral principles] approach might have had, it was not the common law of California as articulated by our Supreme Court"].)

*Palm Springs* set into motion a chain reaction of decisions at the California Court of Appeal level that applied neutral principles instead of principle of government. First, *Protestant Episcopal Church v. Barker* (1981) 115 Cal.App.3d 590 [171 Cal.Rptr. 541, 614] (hereafter *Barker*), relied on by Petitioners, followed *Palm Springs* to apply neutral principles, yet never discussed the Supreme Court precedent to the contrary. (*Ibid.* ["We next turn to California law to determine what legal principles California courts employ to resolve disputes over church property. Fortunately, we have the benefit of the comprehensive analysis of the problem" in the *Palm Springs* opinion].)

Similarly, the remaining cases relied on by Petitioners — *Korean United, Guardian Angel, St. Luke's*, and *Concord Christian* — followed *Barker* as precedent for applying neutral principles in California, again without a comprehensive analysis of or deference to this Court's prior decisions. (See Pet. Br. at p. 20; *Korean United Presbyterian Church v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480, 496, 499 [281 Cal.Rptr. 394, 404, 406] (hereafter *Korean United*) [*Barker* is "the most definitive appellate consideration of the legal principles concerning church property disputes in California"]; *Guardian Angel Polish Nat'l Catholic Church of L.A., Inc. v. Grotnick* (2004) 118 Cal.App.4th 919, 930 [13 Cal.Rptr.3d 552, 560] [citing *Hull Church, supra*, 393 U.S. at p. 449, for the proposition that courts must apply neutral principles of law];



*California-Nevada Annual Conference of the United Methodist Church v. St. Luke's United Methodist Church* (2004) 121 Cal.App.4th 754, 762 [17 Cal.Rptr.3d. 442, 448] (hereafter *St. Luke's*) [*Barker* is “the leading case”]; *Concord Christian Ctr. v. Open Bible Standard Churches* (2005) 132 Cal.App.4th 1396, 1408 [34 Cal.Rptr.3d. 412, 422] [citing to *Hull Church* and *Barker* to establish that “we must apply neutral principles of law de novo”].) As is clear, the “watershed” line of cases cited by Petitioners was nothing of the sort.

In addition to deviating from precedent, *Palm Springs*' misapplication of neutral principles created uncertainty in the law, which has blurred the line between secular and ecclesiastical issues. For example, although *Palm Springs* acknowledged that it could not involve itself in an ecclesiastical dispute (*Palm Springs, supra*, 89 Cal.App.3d at p. 923), the appellate court wrongly suggested that it could adjudicate church property disputes that are caused or affected by purely ecclesiastical matters, even when these ecclesiastical disputes are already before church judicatories. (*Id.* at p. 919; see also *St. Luke's, supra*, 121 Cal.App.4th 754, 771.) By taking on civil controversies that were intermingled with ongoing ecclesiastical disputes, California courts applying *Palm Springs* are essentially resolving ecclesiastical issues.<sup>2</sup>

Yet, despite applying neutral principles, numerous other California cases have ultimately (and correctly) held that Courts must *defer*

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<sup>2</sup> Although *Palm Springs* purported to rely on *Hull Church*, which stated that neutral principles of law could be used to decide church property disputes, *Hull Church* also cautioned that civil courts have “no role in determining ecclesiastical questions in the process of resolving property disputes.” (*Hull Church, supra*, 393 U.S. 440, 447, original italics; see also *Palm Springs, supra*, 89 Cal.App.3d at pp. 920–921, 925.)

to “authoritative ecclesiastical body” determinations bearing on which rival faction is “entitled to the use and enjoyment of the Church property.” (*Korean United*, *supra*, 230 Cal.App.3d at p. 503; see also *id.* at p. 498 [enforcing Presbyterian Church’s express trust provision adopted in the wake of *Jones v. Wolf*]; *Concord Christian*, *supra*, 132 Cal.App.4th 1396, 1411; *Guardian Angel*, *supra*, 118 Cal.App.4th 919, 930; *Metropolitan Philip v. Steiger* (2000) 82 Cal.App.4th 923, 930–931 [98 Cal.Rptr.2d 605, 609–610] [“the real question in this case was ... which of the two local groups is entitled to possession and use of the property,” and the ecclesiastical authorities’ determination of the issue is binding].)

The body of caselaw applying *Palm Springs* has encouraged a race to the courthouse — if an individual congregation raises a grievance over ecclesiastical issues and senses that the church government will not rule in its favor, it is well-served by filing a lawsuit regarding ownership of church property as soon as possible or at least before a final determination of its grievance within the church. In the absence of a decision by the highest church judicatory, the *Palm Springs* line of cases purportedly allows a civil court to step into the fray and decide the “church property” dispute, in effect resolving the ecclesiastical dispute for the church. Such conduct causes confusion and uncertainty for hierarchical churches throughout California and undercuts the stability and community of the broader denominational church.

Recognizing that the *Palm Springs* line of decisions had “struck off in a clearly different direction than the one used by the [California] Supreme Court in the *Baker-Wheelock* line of cases” (*Episcopal Church Cases*, *supra*, 152 Cal.App.4th at p. 845), the Fourth District here concluded that the best way to restore predictable legal

outcomes in California is to follow this Court's binding precedent applying neutral principles. Amici respectfully request that this Court affirm the Fourth District here and reinforce its prior holdings that principle of government should be followed when resolving church property disputes in California. It should further overrule the *Palm Springs* line of cases to the extent such decisions purport to apply a different standard.

**III.  
EVEN UNDER NEUTRAL PRINCIPLES, AN EXPRESS  
CONSTITUTIONAL TRUST ENSURES THAT DENOMINATIONS  
RETAIN CHURCH PROPERTIES**

Even if this Court were to follow neutral principles here instead of principle of government, application of that doctrine does not save the Petitioners' case. The crux of Petitioners' argument is that courts resolving church property disputes need only look at local deeds and corporate charters. According to Petitioners, these documents create a presumption of ownership in favor of the local church absent an express reversionary or trust interest in favor of the denomination. (See Pet. Br. at pp. 36–37.) According to Petitioners, the presence of reversionary or trust language in documents of the denominational church are mostly irrelevant because “the ‘constitutions of the general church’ do not provide clear and convincing evidence to overcome the presumption of ownership.” (*Id.* at p. 42.) Petitioners' position is squarely at odds with *Jones v. Wolf*. Under *Jones*, the existence of an express trust in the canons or constitutions of the denominational church is *dispositive* of whether the denominational church or the local congregation may dispose of church property.

**A. The U.S. Supreme Court Requires that Courts Examine Church's Governing Documents to Determine Whether They Recite an Express Trust.**

In *Hull Church, supra*, 393 U.S. 440, the U.S. Supreme Court reversed the Georgia Supreme Court, which had resolved a church property dispute by applying a theory of implied trust, whereby the property of a local church affiliated with a hierarchical church organization was deemed to be held in trust for the general church, provided the general church had not “substantially abandoned” its tenets of faith. (*Jones, supra*, 443 U.S. at p. 599.) In remanding to the Georgia court, the U.S. Supreme Court “noted in passing” that neutral principles could be applied. (*Ibid.*) Ten years later, in *Jones v. Wolf*, the U.S. Supreme Court revisited the issue — again on certiorari from the Supreme Court of Georgia — and addressed the question of whether a state may constitutionally adopt neutral principles of law as a means of adjudicating church property disputes. (*Id.* at p. 597.)

The Court in *Jones* noted that, following *Hull Church*, the law of neutral principles was refined (at least as to disputes involving church property). The Court discussed proper application of neutral principles in two cases — one of which resulted in church property being awarded to the local congregation (*Presbyterian Church v. Eastern Heights Church (Presbyterian Church II)* (Ga. 1969) 167 S.E.2d 258) and the second in church property being awarded to the denominational church (*Carnes v. Smith* (Ga. 1976) 222 S.E.2d 322). (*Jones, supra*, 443 U.S. at p. 600.) The dispositive issue in each case was the existence of express trust language in the governing documents of the denominational church:

As in *Presbyterian Church II*, the court [in *Carnes*] found no basis for a trust in favor of the general church in the deeds, the corporate charter, or the state statutes dealing with implied trusts. The court observed, however, that the

constitution of The United Methodist Church, its Book of Discipline, contained an express trust provision in favor of the general church.

(*Id.* at pp. 600–601.) Conversely, in discussing the case before it, the Court noted, again, that the relevant documents, i.e., the deeds, local church charters, state statutes governing church property, and the provisions of the constitution of the general church concerning ownership and control of church property (see *id.* at pp. 603–604) did not contain the trust language central to the *Carnes* decision:

And here, as in *Presbyterian Church II*, but in contrast to *Carnes*, the provisions of the constitution of the general church, the Book of Church Order, concerning the ownership and control of property failed to reveal any language of trust in favor of the general church.

(*Id.* at p. 601.) Based upon the lack of any trust language in the relevant documents, the U.S. Supreme Court in *Jones* noted that the Georgia courts “accordingly held that legal title to the property of the Vineville church was vested in the local congregation.” (*Ibid.*)

Understanding that its approval of neutral principles as a constitutional method for resolving church disputes and focus on express trust language could be construed as imposing an immense burden on denominational churches, the U.S. Supreme Court directly instructed hierarchical churches, such as Respondent and Amici here, that to *ensure that church property would be retained by its loyal members* in the event of a dispute, they could amend their constitutions rather than amending individual deeds and corporate charters:

Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can *ensure*, if they so desire, *that the faction loyal to the hierarchical church will*

*retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal.*

(*Jones, supra*, 433 U.S. at p. 606, italics added.) Thus, the Court provided three alternative places where churches could include express trust language to ensure that the church property remained with its loyal members: the deeds, corporate charters or the constitution of the general church.<sup>3</sup> (*Ibid.*)

Heeding the U.S. Supreme Court's instruction, hierarchical churches nationwide, including Respondent and Amici, amended their national church governing documents to include a *Jones v. Wolf*-style statement of express trust in favor of the general church to memorialize long-standing implied trust arrangements.<sup>4</sup> As the U.S. Supreme Court

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<sup>3</sup> Cal. Corp. Code § 9142(c)(2) is consistent with *Jones v. Wolf* in that churches may protect properties by including express trust language in their national governing documents. See also, e.g., *Korean United, supra*, 230 Cal.App.3d at p. 508 ["Corporations Code section 9142, subdivision (c)(2) now provides that a trust is presumed in religious assets 'to the extent that ... the governing instruments of a superior religious body or general church of which the corporation is a member so expressly provide'"]; *Guardian Angel, supra*, 118 Cal.App.4th at p. 931. Further, trusts created by a general church's governing documents may only be amended or dissolved by amending the governing documents creating the trusts. (Cal. Corp. Code § 9142(d); see also *Episcopal Church Cases, supra*, 152 Cal.App.4th 808, 860–861.) To the extent *St. Luke's, supra*, 121 Cal.App.4th 754, contradicts the plain language of section 9142 and the U.S. Supreme Court's decision in *Jones v. Wolf*, *St. Luke's* was wrongly decided.

<sup>4</sup> See, e.g., Respondent Br. at p. 8 ["in 1979, in response to *Jones v. Wolf* ... the Church adopted Canon 1.7(4)"]; see also 3 A.A. 376, 429. "A.A."

suggested, this approach provided a consistent, comprehensive memorialization of the intent of the parties within the denomination, and imposed a significantly reduced burden compared to what would have been required to amend each of the tens-of-thousands of deeds and local church corporate charters. These denominational churches have been relying on the protections of these trust provisions for nearly 30 years.

Yet, Petitioners ask this Court to ignore the plain language of *Jones v. Wolf*, and misapply its holding to eviscerate these trust provisions. (See, e.g., Pet. Br. at p. 42 [“the ‘constitutions of the general church’ do not provide clear and convincing evidence to overcome the presumption of ownership in St. James Church”].) However, requiring amendments of individual deeds and corporate charters as Petitioners urge here would mean hierarchical churches could never employ the streamlined and comprehensive approach suggested by *Jones v. Wolf*.

If the U.S. Supreme Court intended to limit the effectiveness of trust language to individual deeds and charters — tailored to individual laws in each of the 50 states — it would have said so. Instead, it told United States churches that they could undertake the “minimal burden” of adopting a trust clause such as that found in the Episcopal Church’s Constitution and Canons. This Court should follow the Supreme Court’s decision in *Jones v. Wolf* and uphold this and similar trust provisions that hierarchical churches have relied upon since that decision.<sup>5</sup>

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refers to “Appellants’ Appendix,” filed by the Respondent Episcopal Church in Appeal No. G036868.

<sup>5</sup> Courts applying neutral principles as set forth by *Jones v. Wolf* repeatedly give effect to trust language found in church polity texts. (See, e.g., *Bishop & Diocese of Colo. v. Mote* (Colo. 1986) 716 P.2d 85; *E. Lake Methodist*

**B. Ignoring Trust Language in Denominational Church Governing Documents Would Ensure Nothing to its Loyal Members.**

Were state courts to allow local churches like that of the Petitioners to unilaterally disclaim trusts that were created via general church constitutions, they would effectively allow small groups at the lowest level of church hierarchy to dictate questions of denominational polity and rewrite general church constitutions.<sup>6</sup> Indeed, Petitioners'

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*Episcopal Church, Inc. v. Trustees of the Peninsula-Del. Annual Conference of the United Methodist Church, Inc.* (Del. 1999) 731 A.2d 798; *Cumberland Presbytery v. Branstetter* (Ky. 1992) 824 S.W.2d 417, 422; *Bethany Indep. Church v. Stewart* (La.Ct.App. 1994) 645 So.2d 715; *Parent v. Roman Catholic Bishop of Portland* (Me. 1981) 436 A.2d 888; *Shirley v. Christian Episcopal Methodist Church* (Miss. 1999) 748 So.2d 672, 677; *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville* (N.Y. App. Div. 1999) 684 N.Y.S.2d 76, 82; *Daniel v. Wray* (N.C. Ct. App. 2003) 580 S.E.2d 711; *In re Church of St. James the Less* (Pa. 2005) 888 A.2d 795; *Fairmount Presbyterian Church, Inc. v. The Presbytery of Holston* (Tenn.Ct.App. 1975) 531 S.W.2d 301.)

<sup>6</sup> Contrary to Petitioners' contention, constitutional trusts are not unilaterally imposed. (Pet. Br. at p. 41 ["a denomination's *ex post facto*, unilateral enactment of a 'trust rule' is not legally cognizable"].) Similar to many of the Amici, Respondent Episcopal Church employs a representative system in which the individual congregations and members participate through representatives elected to each of the various levels of the ecclesiastical hierarchy, including the General Convention that adopted Canon 1.7(4). (Respondent Br. at pp. 5–6; 3 A.A. 371; 415–417, 424–426.) Moreover, congregations may object to actions taken by the national church and pursue ecclesiastical relief. (Respondent Br. at p. 9; 3 A.A. 702, 711–712.) Here, Petitioners enjoyed the benefits of continued affiliation with the Episcopal Church for 25 years after the Episcopal Church adopted Canon 1.7(4) in 1979. (Respondent Br. at p. 8; 3 A.A. 376, 429.) Petitioners' ongoing membership and consequent obedience to the Episcopal Church's Constitution is demonstrative of acceptance and validation of the constitutional trust. In fact, it is *Petitioners* that are



proposed application of neutral principles would eviscerate the protections promised by *Jones v. Wolf* and “ensure” nothing to the loyal faction of a church. To the contrary, it would empower schismatic factions — who previously pledged their loyalty to their denominational churches and acceded to those churches’ constitutions — to render impotent the long-standing trusts embodied in those constitutions. Such a misapplication of *Jones v. Wolf* would have far-reaching impact beyond the parties to this case and would adversely affect all churches with a hierarchical form of government that have relied on *Jones v. Wolf* for the last 25-plus years.

#### IV. CONCLUSION

As this Court has held, the appropriate analysis for resolving church property disputes is the principle of government approach. This established approach, used by many states and approved by the U.S. Supreme Court in *Jones v. Wolf*, leads to consistent and predictable results wherein a congregation that is part of a hierarchical denomination is bound by that denomination’s decisions in the event of a dispute.

If this Court were to overturn its prior precedent and adopt neutral principles in California, it should follow the U.S. Supreme Court’s decision in *Jones v. Wolf* and find that the Episcopal Church’s constitutional trust clause created a binding, express trust in favor of the denominational church.

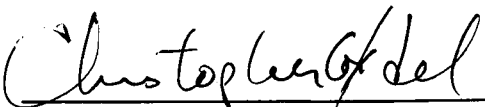
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proposing to unilaterally disclaim an express trust in the Episcopal Church’s governing documents.

Dated: May 22, 2008

Respectfully submitted,

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**CERTIFICATE OF WORD COUNT**  
(California Rule of Court 8.520(c)(1))

I certify under penalty of perjury under the laws of the State of California that I have fully complied with all applicable provisions of California Rule of Court 8.520(c)(1) that counsel for Amici Curiae state the number of words in the brief.


The attached Amicus Curiae Brief of Clifton Kirkpatrick et al. in Support of Plaintiff in Intervention and Respondent Episcopal Church contains 5,492 words. This information is based on the word count of the computer program used to prepare the brief.

Dated: May 22, 2008

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I am a citizen of the United States, more than 18 years old, and not a party to this action. My place of employment and business address is 201 Redwood Shores Parkway, Redwood Shores, California 94065. On May 22, 2008, I caused a copy of:

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF CLIFTON KIRKPATRICK ET AL. IN SUPPORT OF PLAINTIFF IN INTERVENTION AND RESPONDENT EPISCOPAL CHURCH; and**

**AMICUS CURIAE BRIEF OF CLIFTON KIRKPATRICK ET AL. IN SUPPORT OF PLAINTIFF IN INTERVENTION AND RESPONDENT EPISCOPAL CHURCH**

to be served as follows:

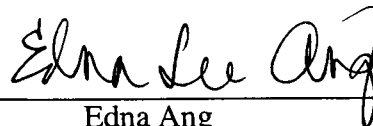
[ **XX** ] **BY MAIL** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. The above document was placed in a sealed envelope with first-class postage thereon fully prepaid, and placed for collection and mailing on that date following ordinary business practice.

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Executed on May 22, 2008 at Redwood Shores, California. I  
declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

  
\_\_\_\_\_  
Edna Ang